

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Kenneth D. Lowther, Jr. and Rebecca L.)
Lowther, as parents and next friend of their)
minor daughter, D.L.;)

)
Donald Sedlacek and Jennifer Sedlacek, as)
parents and next friend of their minor)
daughter, T.S.; and)

Case No. 8:21-cv-00048

)
Brian Scobee and Angie Scobee, as parents)
and next friend of their minor daughter,)
M.S.;)

)
Plaintiffs,)

)
v.)

)
Bennington Public School District Board of)
Education, a/k/a Bennington Public Schools;))
and Does 1 through 50,)

)
Defendants.)

CONSENT DECREE

This Consent Decree is approved and entered by the Court based upon an agreement between the Plaintiffs, Kenneth D. Lowther, Jr. and Rebecca L. Lowther, as parents and next friend of their minor daughter, D.L.; Donald Sedlacek and Jennifer Sedlacek, as parents and next friend of their minor daughter, T.S.; and Brian Scobee and Angie Scobee, as parents and next friend of their minor daughter, M.S.;

(hereinafter “Plaintiffs”), and the Defendant, Bennington Public School District Board of Education a/k/a/ Bennington Public Schools (hereinafter “School Board,” “Board,” “Bennington Public Schools,” or “School District”). These Parties to this Consent Decree are also referred to in this document collectively as “Parties” or separately as “Party.” No John Doe defendants were named during the course of this litigation, and no additional defendants were named as parties to this case.

WHEREAS, Plaintiffs have sued the School Board with respect to their claims that the School District violated Title IX of the Education Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and have contended that the School District has denied Plaintiffs’ daughters and other female students at Bennington Public Schools the equal treatment and benefits that must necessarily accompany an equal opportunity to participate in interscholastic and other school-sponsored athletics, which the School Board denies;

WHEREAS, the Parties to this Consent Decree agree that the School District is bound by the requirements of Title IX of the Education Amendments of 1972 and the Parties have jointly agreed, through their designated representatives, that the interests of the School District's students (male and female) are best served by reaching an agreement regarding the claims made by Plaintiffs in the above-captioned matter;

WHEREAS, the Parties concur that affording equal opportunities to participate in athletics along with equal treatment and benefits to the Plaintiffs' daughters, and other female students, is essential to Title IX compliance and that this can best be achieved by a cooperative effort, joining Title IX's mandatory requirements with the Parties' mutual and genuine dedication to designing an athletic program that enhances the benefits of athletic involvement for the Plaintiffs' daughters and all female students at Bennington Public Schools; and

WHEREAS, Plaintiffs and the School Board desire to avoid the uncertainty, time, and expense of maintaining and defending a lawsuit;

NOW THEREFORE, intending to be legally bound hereby, the School Board agrees to take the following specific actions and/or make the following commitments to ensure that the mandates of Title IX are effectuated immediately, unless another timeline is specifically stated, as follows:

1. The School Board acknowledges its obligations to comply with the general mandates of Title IX, its Regulations, and its Interpretive Guidance.¹

¹ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (1988); OCR Regulations "Nondiscrimination on the Basis of Gender in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance." 34 C.F.R. § 106 (1994); and Related Policy Guidance.

2. The School Board agrees to make improvements to the Bennington High School softball program and/or its facility in two phases. Phase I is to be completed by the Phase I Completion Date of August 6, 2021 and Phase II is to be completed by the Phase II Completion Date of August 1, 2022, as detailed below.
3. As part of Phase I of improvements to the Bennington High School softball program and/or its facility, the School Board agrees that the Bennington High School softball program and/or its facility, no later than the Phase I Completion Date of August 6, 2021 except as otherwise specified, will be provided the following features equivalent to those provided to the Bennington High School baseball program and/or its facility:
 - a. Covered ticket booth
 - b. Field lighting
 - c. Weighted, quality netting on home hitting facility
 - d. Mobile batting practice cage
 - e. Field in safe and playable condition with quality field material, appropriate drainage and maintenance
 - f. Home plate and pitching circle tarps
 - g. On-deck circles
 - h. Second story press box, as proposed by the School District and approved by the voters in the 2020 bond issue, and finished interior with storage, shelves, counters, chairs, and sound/PA system and speakers, to be completed by August 19, 2021
 - i. Secure storage, with shelves, racks and/or cabinets, below the press box

- j. Permanent, black vinyl-coated 6' outfield fence with top rail protector, windscreen and distance signs
 - k. Lighted flagpole
- 4. As part of Phase II of improvements to the Bennington High School softball program and/or its facility, the School Board agrees that the Bennington High School softball program and/or its facility, no later than the Phase II Completion Date of August 1, 2022, will be provided the following features equivalent to those provided to the Bennington High School baseball program and/or its facility:
 - a. Concession stand and permanent restrooms, as proposed by the School District and approved by the voters in the 2020 bond issue
 - b. Solid wall dugouts of equivalent size, with two-tier dugout benches, bat and helmet racks, and dugout screens
 - c. Home bullpen with lighting, and visitors bullpen, both next to the dugouts and enclosed with black vinyl-coated fencing, and screens
 - d. Backstop netting and backstop foundation with padding
 - e. Permanent, black vinyl-coated 6' sideline fences with windscreens
 - f. Warning track along the outfield and sideline fences
 - g. Visitors hitting facility
 - h. Spectator seating
 - i. Bullpen tarps
 - j. Security system
 - k. Lighting on home hitting facility to the extent the home hitting facility at the baseball facility is lighted
 - l. Scoreboard of equivalent size and with equivalent features
- 5. Construction of the new and/or renovated facilities described in

paragraphs 3 and 4 above, shall be completed as follows:

The School Board shall make every effort to complete the construction of the new and/or renovated facilities and improvements to the Bennington High School softball facility by the dates specified in paragraphs 2 through 4, above, of this Decree. Such performance is subject to material and labor availability, contractor default, or force majeure events. If the Board will be unable to complete any of the construction by those dates due to delays outside of its control, the Board shall notify the Plaintiffs in writing as to the specific condition(s) causing the delay in completing any of the construction of the facilities.

6. The press box, restrooms and concession stand buildings shall be constructed as detailed in the architectural drawings prepared by DLR Group, included in the Bennington High School Site and Building Support Building Improvements Combined Contract Bid-Set dated March 11, 2021, and the Bennington Public Schools High School Site & Building Improvements Project Manual – Volumes I and II, DLR Group Project No. 10-20105-50, also dated March 11, 2021.
7. The School Board shall ensure that improvements are made to the Bennington High School softball field prior to the Phase I Completion Date of August 6, 2021, to ensure playability, safety, appropriate

drainage and appropriate field condition. This work shall be supervised by Odeys and any other subcontractor, consultant or vendor hired by the School District, and shall include GPS grading as well as completion and compliance with each and every item on Odeys' "Baseball/Softball Field Safety and Maintenance Checklist" found on its website, with the only exception that the warning track at the outfield fence and along the sideline fences is to be completed by the Phase II Completion Date of August 1, 2022.

8. The School Board shall ensure that the Bennington High School softball program is provided equivalent maintenance of its facilities, including maintenance equipment, as compared to that provided to the Bennington High School baseball program. The Board shall ensure that the softball field is in an equivalently safe and playable condition and of equivalent quality, as the baseball field, at the beginning of their respective seasons. Prior to the start of the 2021 high school softball season, the School District shall inspect the dugout roofs at the softball facility and make any repairs necessary.
9. The School Board shall ensure that the ticket booth, press box, concession stand, restrooms, dugouts, helmet and bat racks, dugout benches, backstop foundation padding, tarps, scoreboard and

windscreen are finished in school colors, and to the extent they are included at the baseball facility, with School District logos.

10. At Plaintiffs' request Musco Lighting conducted an inspection of the field lighting at the softball facility, and Plaintiffs are satisfied with the lighting Report.
11. The School Board shall ensure that a porta potty trailer with running water and tanks, equivalent to the 3 stall ADA Handicap Accessible Restroom Trailer at <https://stahlaservices.com/restroom-trailers/>, is provided at the Bennington High School softball facility for the entire 2021 high school softball season, and that the trailer is serviced and maintained on the schedule recommended by the provider.
12. With regard to spectator seating, the School Board shall ensure that equivalent seating is provided for the softball facility as compared to the baseball facility, both as to quality and quantity, by the Phase II Completion Date of August 1, 2022. To the extent stadium (raised) seating is provided at the baseball facility, it shall be provided at the softball facility. Tables shall also be provided at the softball facility equivalent to those provided at the baseball facility.

13. The School Board shall ensure that a security system is provided at the Bennington High School softball facility, equivalent to that provided at the baseball facility, by the Phase II Completion Date.
14. The School Board shall ensure that the current home outdoor hitting facility at the Bennington High School softball facility is lighted to the extent the baseball home outdoor hitting facility is lighted, prior to the beginning of the 2022 High School softball season, and shall inspect the netting, ensuring that all nets are safe and secure by properly repairing or replacing the nets and ensuring that they are properly anchored, prior to the beginning of the 2021 high school softball season.
15. With regard to storage, the School Board shall ensure that equivalent storage is provided at the softball facility, both as to quality and overall capacity, as compared to that provided at the baseball facility.
16. To the extent the School Board provides, or allows to be provided, equipment, supplies, or uniforms for students who participate in athletics at Bennington High School, both as to quantity and quality it shall do so in an equivalent manner for all of its sports programs at Bennington High School. The Board agrees to monitor what it currently offers to Bennington High School male sports as compared to Bennington High School female sports and to make the adjustments

necessary to ensure that equivalent equipment, supplies and uniforms are provided, both as to quantity, quality and frequency of replacement. This shall include but not be limited to balls, bats, helmets, protective screens, hitting tees and pitching machines. New dark-colored uniforms shall be provided to the softball program prior to the 2021 softball season, and new light-colored uniforms shall be provided to the softball program prior to the 2023 softball season. The Board shall ensure that new uniforms are provided to the girls' basketball program equivalent to those provided to the boys' basketball program both as to quality, quantity and frequency of replacement. The cost of uniforms for boys' and girls' sports shall be equivalent.

17. To the extent that off-season training is provided to any sport at Bennington Public Schools in accordance with NSAA rules and regulations, the School Board shall ensure that equivalent off-season training is provided to girls' and boys' sports. This includes all training tools and programs, as well as the availability of coaching for off-season training.
18. The School Board shall ensure that female athletes have equivalent scheduled use of any weight room facilities as compared to male athletes at Bennington High School. Summer lifting times shall be

alternated to ensure equivalent access to the weight room for girls as compared to boys. The Board shall also ensure that anyone who teaches weight training classes or supervises weight training for athletes, receives formal training regarding the value of strength and conditioning, and proper weight lifting techniques for female athletes, and that its coaches of female athletes incorporate into the training of female athletes, instructions on the benefits of strength and conditioning. Weights shall be provided that are appropriate for female weight lifting. The Board agrees to support the installation of an awards wall for girls, similar to what is currently provided for boys. The Board shall ensure that the weightlifting class at Bennington High School schedules maximum lift dates around both boys' and girls' games to ensure an equivalent and appropriate recovery time before competing in those games, without affecting students' grades.

19. The School Board acknowledges its obligation to select coaches - head, assistant and volunteer - for all Bennington High School teams (male and female) using the same criteria and with the same motivation to attract qualified and skilled coaches. The Board shall ensure that the School District uses equivalent hiring practices and procedures for girls' teams as they do for boys' teams, including equivalent searches

for and hiring of position coaches and/or coaches with experience in position-specific skills. This includes the posting of job openings, the interview process and the hiring of equally qualified and experienced coaches. The Board shall ensure that the salaries and duties for coaches of girls' teams are equivalent to the salaries and duties for coaches of boys' teams, and that increase in salary is based equivalently on accrued years of experience at a comparable level of competition. The Board shall ensure that the coach-to-athlete ratios are equivalent for comparable male and female sports and that access to coaches is equivalent for male and female sports.

20. The School Board shall ensure that equivalent transportation is provided to female athletes as compared to male athletes, both as to the mode of transportation, availability of storage of equipment and departure times. For away basketball games, the Board shall ensure that, to the extent it is in its control, the junior varsity boys' and girls' teams travel together, or at the same time and in equivalent vehicles, and that the varsity boys' and girls' teams travel together, or at the same time and in equivalent vehicles. The Board shall ensure that boys' and girls' coaches have an equivalent opportunity to arrange for equivalent overnight lodging.

21. The School Board shall ensure that the scheduling of games is equivalent for girls as compared to boys at Bennington Public Schools. The time of Bennington Public Schools boys' and girls' home basketball games shall be rotated so as to ensure that, to the extent it is in its control, each has an equivalent opportunity to play at the later time. The Board shall also ensure that, to the extent it is in its control, the quality of competition (i.e., teams classified as Class A, Class B or Class C) for Bennington High School softball and baseball program schedules is equivalent, and that any disparity is based on gender-neutral factors.
22. The School Board shall ensure spectator accessibility to the Bennington High School softball facility by ensuring that the stadium access gates and restrooms will be open for all home softball games.
23. The School Board shall ensure that the Bennington High School softball program has equivalent exclusivity of use of its softball facilities as compared to that of the Bennington High School baseball program, both during their respective baseball and softball seasons and off season, with the exception of youth league seasons not associated with Bennington Public Schools. To ensure this provision, the Board shall keep the fence surrounding the softball field secured, with signs

warning that the use of the field is by School District authorization only. Such authorization shall be granted by the School District upon request to the Bennington High School softball players and softball program personnel during the softball season and off season, with the exception of youth league seasons not associated with Bennington Public Schools, consistent with School District facility use requirements and other School District policy. Such authorization shall not be granted by the School District to a third party at the softball facility during the softball season and off season, with the exception of youth league seasons not associated with Bennington Public Schools, unless equivalent access is provided to a third party at the facility used by the Bennington High School baseball program.

24. The School Board shall develop a rotation plan that ensures trainers are assigned to athletic teams in a gender-neutral and equitable manner and that neither gender is afforded priority access to trainers. This provision shall include both paid and volunteer trainers. The Board shall also ensure that a training area, with training equipment, is provided for female athletes in a location equivalently proximate to, or within, the girls' changing and/or practice and competition areas, as compared to

the training area, with training equipment, provided for the boys at their changing and/or practice and competition areas.

25. The School District shall promote and publicize female and male sports in an equivalent manner. The School District shall give comparable opportunities to the female and male teams in connection with school announcements, advertisements, assemblies, signage, school publications, pep rallies, sports banquets, television and radio broadcasts and other opportunities to publicize students' involvement in sports. To the extent that the School District or any of its employees or agents contact the media regarding school-sponsored athletic competition, the School District and its employees or agents shall make equivalent efforts to do so for the sports of both genders. In instances where media guides, programs, competitive schedules and other similar information are prepared, the School District shall provide such items for the teams of both genders in a similar format and comparable size. As part of this responsibility to promote and publicize girls' sports, the School Board shall also ensure, barring unforeseen circumstances, that the following are provided in an equivalent manner to comparable boys' and girls' sports and that any variance will be based solely on gender-neutral factors:

- a. Announcers
- b. Live national anthem
- c. Music during pre-game
- d. Introductions and introductory music
- e. Pep band and other music
- f. Dance and cheerleaders
- g. Video streaming
- h. Video saved to YouTube, etc.
- i. Awards submissions, entered on time
- j. Awards nights
- k. Promotion of events via Twitter, MaxPreps, Hudl, etc.

26. The School Board agrees that it has the responsibility to equitably support girls' and boys' sports. The Board shall monitor contributions and the effect contributions have on school sponsored-sports. The Board agrees that girls' and boys' sports shall be supported equitably and that all sports shall be funded on a gender-neutral basis regardless of the source of funding, whether school funds, contributions from boosters, or other third party donations.
27. It is understood and acknowledged by the School Board and Plaintiffs that the School District relies on the contributions of time, money, equipment and supplies that come from organizations such as booster clubs, businesses, individual donors, parents and others. The Board desires to retain the enormous benefits provided by private as well as public donors. However, the Board shall not permit any infusion of non-

school monetary or non-monetary contributions to result in programs which are inequitable.

28. The School Board shall ensure that girls' athletic programs have an equivalent opportunity to fundraise as compared to boys' athletic programs.
29. Bennington Public Schools currently has two Title IX Coordinators. The two Title IX Coordinators are responsible for overseeing the School District's compliance with Title IX and this Consent Decree, including the following areas:
 - a. Providing copies of this Consent Decree to parents, students and other interested individuals upon request;
 - b. Keeping current the School Board's Grievance Procedure on the School District's website, presently available at <https://sites.google.com/bennps.org/bps-title-ix-site/home>, applicable to complaints of discrimination and the procedure for filing a grievance, and other information which arises with respect to the School District's Title IX obligations, whether raised by School District employees, parents or students; and
 - c. Maintaining by continuous sports program oversight compliance in areas where the School District has achieved parity in male and female sports programs; and serving as a source of information for anyone wishing to initiate the grievance procedure.
30. The Parties to this Consent Decree, the School Board and Plaintiffs, agree not to object to the Court's authority to enforce the terms of this

Consent Decree. In the event a Party believes that there has been a default of an obligation created by this Decree and that the default is the result of gender discrimination, prohibited by Title IX, such Party shall first take its complaint through the Board's Grievance Procedure applicable to claims of discrimination. If a resolution satisfactory to the aggrieved Party is not rendered through the Grievance Procedure, the Parties agree that nothing in this Consent Decree is meant to prevent the aggrieved Party from pursuing the matter through the courts.

31. Upon execution of this Consent Decree, the School Board agrees to pay Plaintiffs' reasonable attorney's fees and costs connected with this action to Schiller Law Firm, in the amount of one hundred forty-four thousand, four hundred and fifty dollars (\$144,450.00). No other fees, costs or monetary damages of any kind or type will be due from any Party to any other Party, pursuant to the terms of this Consent Decree.
32. The Parties shall enter a Stipulation for Dismissal with Prejudice which shall be filed in this matter within ten (10) calendar days of Plaintiffs' receipt of all monies due in accordance with this Consent Decree.
33. The terms of this Consent Decree have been negotiated by the Parties with the assistance of their respective legal counsel. By the execution hereof, the Parties expressly warrant that they have read this Consent

Decree, understand its terms, have had the opportunity to confer with legal counsel regarding its contents, and are signing this Consent Decree of their own free will and act. The Parties further expressly warrant that they are over the age of nineteen (19) years and have no disabilities, whether legal or otherwise, which could invalidate this Consent Decree.

34. In the event that this Consent Decree or any provision hereof is construed or determined to be ambiguous by any court of competent jurisdiction, the Parties agree that each Party, through its attorney, has contributed to the preparation of this Consent Decree and that the Parties have jointly written or composed the clauses contained herein, and that no Party shall be given any advantage over the other Party under the laws of construction of instruments based upon the authorship of this Consent Decree.
35. It is further understood and agreed that if any provision of this Consent Decree is or may be held by a Court of competent jurisdiction to be invalid, void, or unenforceable, that provision shall be severed and the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

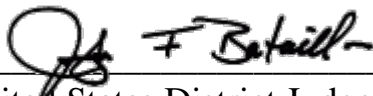
36. The Parties agree to release and by this instrument do release each other, their attorneys, insurers, agents, officers, board members, administrators, teachers, coaches, employees, assigns and successors, of any and all liabilities, actions or claims made in connection with or related to this lawsuit which either may presently have or have had against the other existing as of the date of execution of this Consent Decree.
37. This Consent Decree contains the complete description of the terms between the Parties. All material representations, understandings, and promises by/and for the Parties are contained in this Consent Decree.
38. Any modifications to this Consent Decree must be set forth in writing and signed by all Parties.
39. This Consent Decree is approved by and entered as an Order and Judgment of the Court and shall be subject to the full enforcement powers of the Court. The Parties agree not to object to the Court's authority to enforce the terms of this Consent Decree.
40. All Parties agree to cooperate fully to execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Consent Decree.

41. This Consent Decree may be executed concurrently in one or more counterparts, including execution and transmission of an electronic version, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

42. This Consent Decree shall take effect and shall be binding on each Party immediately on the date when signed by the last Party and the Court.

IN WITNESS WHEREOF, the Parties have executed this Consent Decree.

Date: 7/19/2021



United States District Judge